

House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 53

HOUSE BILL 2084

AN ACT

REPEALING SECTION 37-1127, ARIZONA REVISED STATUTES; AMENDING SECTIONS 37-1128, 37-1129, 37-1131 AND 37-1151, ARIZONA REVISED STATUTES; RELATING TO STATE CLAIMS TO STREAMBEDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Repeal

Section 37-1127, Arizona Revised Statutes, is repealed.

Sec. 2. Section 37-1128, Arizona Revised Statutes, is amended to read:

37-1128. Determination of navigability

A. After the commission completes the public hearing with respect to a watercourse, the commission shall again review all available evidence and render its determination as to whether the particular watercourse was navigable as of February 14, 1912. If the preponderance of the evidence establishes that the watercourse was navigable, the commission shall issue its determination confirming that the watercourse was navigable. If the preponderance of the evidence fails to establish that the watercourse was navigable, the commission shall issue its determination confirming that the watercourse was nonnavigable.

B. With respect to those watercourses that the commission determines were navigable, the commission shall, in a separate, subsequent proceeding, identify and make a public report of any public trust values associated with the navigable watercourse.

C. The commission shall make its determinations under subsections A and B of this section in writing with sufficient documentation and detail to confirm the rationale and basis for the determination. The determinations constitute final administrative determinations and are not subject to title 41, chapter 6, article 10.

D. The commission shall immediately notify the department of any watercourse that it determines to be navigable or nonnavigable under subsection A of this section. Within ninety ONE HUNDRED EIGHTY days after receiving notice that a watercourse is:

1. Navigable, the department shall send notice of that determination to each record owner of, and each person or entity that has an interest of record in, any property that may be affected by the determination and to each person or entity that has requested notification of any determination of navigability. The department shall include a statement of whether the department intends to seek judicial review of the commission's determination.

Any time after the date of the notice under this paragraph, the record title owner or lessee of any affected property may petition the department in writing to disclaim, release, relinquish or dispose of the property from public trust land status as no longer necessary or materially useful for the purposes of the trust.

2. Nonnavigable, the department shall send notice of that determination to each person or entity that has requested notification of any determination of nonnavigability. The department shall include a statement of whether the department intends to seek judicial review of the commission's determination.

1 E. After the time for judicial review of the commission's
2 determination with respect to any watercourse has expired, as provided in
3 section 37-1129, the commission shall cause a record of its determination to
4 be recorded in the office of the county recorder of each county in which any
5 part of the watercourse affected by the determination is located.

6 Sec. 3. Section 37-1129, Arizona Revised Statutes, is amended to read:
7 37-1129. Judicial review

8 A. ~~Within~~ BEGINNING ON THE DATE THE COMMISSION ISSUES A DETERMINATION
9 UNDER SECTION 37-1128, SUBSECTION A AND CONTINUING THROUGH ninety days after
10 the department issues a notice under either section 37-1128, subsection D,
11 paragraph 1 or 2, the state land commissioner or any person who is aggrieved
12 by the commission's determination may seek judicial review in superior court
13 in the county in which all or part of ~~any property~~ THE WATERCOURSE that is
14 directly affected by the determination is located.

15 B. Except as otherwise provided in this chapter, judicial review shall
16 be conducted pursuant to title 12, chapter 7, article 6.

17 C. If separate actions are filed under this section with respect to
18 the same watercourse or adjacent or proximate watercourses, on motion by any
19 party to any such action or on its own initiative, the court may:

- 20 1. Order a joint hearing or trial of any matter in the actions.
21 2. Order all of the actions pending in any court to be consolidated.
22 3. Issue such orders concerning proceedings in the actions as may tend
23 to avoid unnecessary costs or delay or as may be necessary to avoid
24 inconsistent results.

25 Sec. 4. Section 37-1131, Arizona Revised Statutes, is amended to read:
26 37-1131. Notice to landowners; quiet title action

27 A. If the commission determines a watercourse to be navigable as
28 provided in section 37-1128, the state land department shall do the following
29 before it files any quiet title action regarding public trust property
30 beneath or adjacent to the watercourse:

31 1. Collect information and perform land surveys that are necessary to
32 determine ~~where the department believes the exact location of the boundaries~~
33 of the bed of the watercourse ~~are located~~. The bed of the watercourse to
34 which the state claim applies is the bed of the watercourse existing on the
35 date of the commission's determination, unless the preponderance of the
36 evidence establishes a different location. Before making this determination,
37 the department shall provide public notice and any opportunity for comment
38 by the advocate for private property rights established pursuant to title 41,
39 chapter 8, article 1.1 and any other person.

40 2. Compile a complete description of each parcel of land lying wholly
41 or partially in the bed of the watercourse, including record title ownership
42 by any person, and a complete title search of each parcel to show how and
43 when the lands were first conveyed in apparent violation of the public trust.

44 3. If the land was conveyed in apparent violation of the public trust
45 by an agency of the United States, bring an action against the United States

1 for damages and prosecute the action to final judgment. Any damages
2 collected shall be placed in the riparian trust fund established by section
3 37-1156.

4 B. AT LEAST THIRTY DAYS BEFORE ENTERING ONTO ANY LANDS IN OR ADJACENT
5 TO THE BED OF A WATERCOURSE AS REQUIRED FOR PURPOSES OF THIS SECTION, THE
6 DEPARTMENT SHALL NOTIFY ANY RECORD TITLE OWNER OF THE PROPERTY BY CERTIFIED
7 MAIL OF THE INTENTION TO INSPECT THE PROPERTY. THE NOTICE SHALL:

8 1. STATE THE PERIOD DURING WHICH THE DEPARTMENT OR THE DEPARTMENT'S
9 CONSULTANT INTENDS TO INSPECT THE PROPERTY AND THAT THE INSPECTION IS
10 REQUIRED UNDER SUBSECTION A OF THIS SECTION.

11 2. DESCRIBE THE ACTIVITIES THAT THE DEPARTMENT OR THE DEPARTMENT'S
12 CONSULTANT INTENDS TO PERFORM ON THE PROPERTY.

13 ~~B.~~ C. Within thirty days after compiling the parcel information
14 pursuant to subsection A, paragraph 2 of this section the department shall
15 notify each record owner or lessee of property that is located in the bed of
16 the navigable watercourse and each person and entity that have an interest
17 of record in the property of the commission's determination and that, by
18 virtue of the determination, all or a portion of the property will be claimed
19 as public trust land of this state in a quiet title action. The notice shall
20 also provide information prepared by the advocate for private property rights
21 explaining the person's rights and any services available from the
22 advocate. THE NOTICE SHALL INCLUDE:

23 1. THE NAME OF THE WATERCOURSE AND THE DATE OF THE DETERMINATION OF
24 NAVIGABILITY PURSUANT TO SECTION 37-1128.

25 2. THE LEGAL DESCRIPTION AND ACREAGE OF THE PARCELS THAT THE
26 DEPARTMENT HAS DETERMINED TO BE IN THE BED OF THE WATERCOURSE.

27 3. A STATEMENT THAT RECORD TITLE OWNERS, LESSEES AND PARTIES HAVING
28 AN INTEREST OF RECORD IN THE PARCELS HAVE A RIGHT TO APPEAL THE DEPARTMENT'S
29 DETERMINATION OF THE PARCEL BOUNDARIES WITHIN THIRTY DAYS AFTER RECEIVING THE
30 NOTICE AS PROVIDED BY TITLE 41, CHAPTER 6, ARTICLE 10.

31 ~~C.~~ D. The department shall not commence an action to quiet title to
32 land under this article until the commission has issued a final determination
33 regarding the navigability of the watercourse pursuant to section 37-1128 and
34 that determination is subject to no further judicial review pursuant to
35 section 37-1129.

36 ~~D.~~ E. Venue for any action to quiet title under this section is
37 proper only in the superior court in the county in which the affected lands
38 are located, but the court may grant or deny requests for change of venue
39 pursuant to title 12, chapter 4, article 1.

40 ~~E.~~ F. The department shall join as parties to any action to quiet
41 title under this section each record owner of, and each person or entity that
42 has an interest of record in, any property in the county that may be affected
43 by this state's claim to ownership of the bed of the affected watercourse,
44 but this requirement does not constitute grounds for dismissing the action

1 if the persons or entities not joined are not subject to the jurisdiction of
2 the courts of this state.

3 Sec. 5. Section 37-1151, Arizona Revised Statutes, is amended to read:

4 37-1151. Petition to release public trust status

5 A. In responding to a petition filed by a record title owner or lessee
6 pursuant to section 37-1128, subsection D, paragraph 1 the department shall
7 consider the extent to which the property that has been confirmed to the
8 state's ownership in a quiet title action, either because of its nature or
9 because of changes, is no longer of material use for protecting public trust
10 values. If the department concludes that the property is not of material use
11 for protecting public trust values, the department shall consider the extent
12 to which a release of the trust is appropriate in light of the public benefit
13 to be derived from alternate uses, and the equitable interests or hardships
14 of the record title holder or lessee, including each of the following:

15 1. The year in which the property was acquired by the record owner or
16 lessee.

17 2. The entity or person from whom the property was acquired by the
18 record owner or lessee.

19 3. The manner in which the record owner or lessee acquired the
20 property.

21 4. The purchase price or lease terms paid by the record owner or
22 lessee.

23 5. The amount of property taxes paid each year since the record owner
24 or lessee acquired the property.

25 6. The profit or benefit derived from the property by the record
26 owner.

27 7. The extent to which the record owner on the date of acquisition
28 knew or should have known that the property was potentially trust land.

29 8. All improvements made to the property since the record owner or
30 lessee acquired the property.

31 9. The public trust values identified by the commission PURSUANT TO
32 SECTION 37-1128, SUBSECTION B.

33 10. Whether any improvements on the property impair, obstruct, promote
34 or destroy the value of the watercourse for public trust values.

35 11. The existing uses of the property, its reasonable highest and best
36 use and whether such uses impair, obstruct, promote or destroy the value of
37 the watercourse for public trust values.

38 12. Whether the physical condition of the watercourse has materially
39 changed since February 14, 1912 adversely affecting the watercourse's
40 capability of being navigated, including changes due to construction of dams,
41 reservoirs, dikes, levees, canals and ditches that were constructed for water
42 conservation or flood control purposes by public entities, municipal
43 corporations or the United States.

44 13. Any diminution in value to the record owner's or lessee's
45 contiguous property caused by this state's ownership.

1 14. The degree of effect of continuation of the current use or any
2 proposed change in use of the property on public trust values.

3 15. The impact of continuation of the current use or any proposed
4 change in use of the property on the public trust values.

5 16. The impact of continuation of the current use or any proposed
6 change in use of the property when examined cumulatively in conjunction with
7 existing authorized impediments to full use of the public trust values.

8 17. The impact of continuation of the current use or any proposed
9 change in use of the property on the public trust values if those values are
10 considered with respect to the primary purpose to which the property is now
11 suited.

12 18. The degree to which continuation of the current use or any proposed
13 change in use requires that broad public uses be set aside in favor of more
14 limited and private uses.

15 B. At least thirty days before issuing a decision that land may be
16 released from the public trust under this section the department shall
17 provide written notice of the proposed action and an opportunity to comment
18 to any person who has previously requested written notice of actions under
19 this section. The department shall provide contemporaneous written notice
20 of the final decision to any person who filed a comment.

21 Sec. 6. Emergency

22 This act is an emergency measure that is necessary to preserve the
23 public peace, health or safety and is operative immediately as provided by
24 law.

APPROVED BY THE GOVERNOR APRIL 14, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 14, 2003.

Passed the House February 10, 2003,

Passed the Senate April 8, 2003

by the following vote: 56 Ayes,

by the following vote: 30 Ayes,

0 Nays, 3 Not Voting

Jake Flake
Speaker of the House

Norman Y. Moore
Chief Clerk of the House

0 Nays, 0 Not Voting

John Bennett
President of the Senate

Charmen Billewicz
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

9 day of April, 2003

at 2:30 o'clock P M.

Linda Ramirez
Secretary to the Governor

Approved this 14 day of

April, 2003,

at 8:55 o'clock A M.

J. T. Altmeyer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 14 day of April, 2003

at 10:55 o'clock A M.

Janice L. Bauer
Secretary of State